When Worlds Collide

Indians, Archeologists, and the Preservation of Traditional Cultural Properties

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Over the past 30 years, American archeology has expanded from an academic discipline to an environmental science. The impetus to do archeology has shifted accordingly from pure research to cultural resources management, from an interest in the past to a concern for the future. These changes were prompted by the development of preservation laws and regulation during the 1960s and 1970s that resulted in the emergence of archeology as a vital component of the nation's historic preservation program (Keel 1991). Today, most archeology is conducted in response to the compliance requirements of a growing body of federally mandated historic preservation law. As these laws have changed in response to new preservation priorities, archeology and other forms of applied anthropology have also changed.

Recent developments in preservation law and policy have begun to impose new conditions on the practice of archeology as historic preservation. Over the last three years, the concerns of Native Americans, Hawaiians, Alaskans, and other traditional societies have been deliberately added to the process through which the nation preserves its heritage resources. The passage of the Native American Graves and Repatriation Act in 1990 and the recent enactment of the amendments to the National Historic Preservation Act in October of 1992 have given native peoples a direct and unprecedented role in the preservation of their cultural patrimony. These new laws, together with the American Indian Religious Freedom Act (1978) and the Archaeological Resources Protection Act (1979), are changing the relationship among federal and state agencies, archeologists, and Native Americans.

One of the more hotly debated subjects to develop over the last few years is the concept of "traditional cultural properties" as defined in National Register Bulletin 38 issued by the National Park Service in 1990 (Parker and King nd). A traditional cultural property (TCP) is one that is "eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community" (Parker and King nd:1). For Native Americans this definition encompasses the socio-religious aspects of their lives as these relate to the traditional uses of their environment. Bulletin 38 argues that properties with these kinds of values and associations should be incorporated into the review process mandated for all federal undertakings under Section 106 of the National Historic Preservation Act (ACHP 1984).

A good deal of frustration, confusion, and resistance has developed among cultural resource managers over traditional cultural properties, also referred to as properties of traditional cultural value. Some object to the religious nature of these properties, arguing that they should be excluded from consideration. Others are concerned with the practical matter of recognizing a place that may lack any physical manifestation of cultural behavior. Still others question why such a place should be eligible for the National Register of Historic Places to begin with. The problems surrounding this issue are complex and involve social, legal, and political considerations. In its essential form, however, this is a cultural conflict between Indian and non-Indian people; a collision between two very different and separate worlds. The challenge for state and federal agencies, preservation experts, and Native Americans is to find an effective means of making Indian people a real partner in the preservation of their cultural heritage.

In this paper I summarize the problems associated with traditional cultural properties as a concept and make some general recommendations for solving these problems in practice. I address these recommendations to the tribes, the federal agencies, the state historic preservation offices, and to the archeologists who are currently out there on the ground busy doing surveys that in many cases do not include looking for traditional cultural properties.

Problems

When the Park Service issued Bulletin 38 three years ago it challenged the status quo of the nation's historic preservation program. It declared, in short, that the federal government has failed to exercise its responsibility to consider the effects of its actions on the heritage resources of the nation's traditional societies. Since this declaration, perceptual and procedural conflicts have developed as state and federal preservation officials, cultural anthropologists, archeologists, and Native Americans have begun to grapple with ways to rectify the situation. The problem is that what is considered to be the past and what is believed to be worthy of preservation are both culturally defined (Anyon 1991).

Native Americans view their world in different terms than do those who are inculcated with western Euro-American cultural values and perceptions. They do not view the past as something separate from the present; to them the past is a part of their daily lives (NPS 1990). Nor do they share the objective view of reality that characterizes the Euro-American world view (Parker and King nd). Their world view embraces the animate and inanimate as inseparable aspects of life. Native Americans find the priority given to material culture in historic preservation law arbitrary, and they do not understand this narrow concern (Anyon 1990). They see all aspects of their culture as worthy of preservation, not just some it

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(NPS 1990). And yet, it is a Euro-American world view that forms the basis of the legal and regulatory framework that drives the historic preservation process in this country.

The cultural differences that exist between Indian and non-Indian people is manifested by a perceptual asymmetry: what one group sees as vital to its cultural identity, the other often does not even recognize. Without the benefit of the conceptual framework that enables Native Americans to interact with the sacred and traditional aspects of the landscape, Euro-American archeologists and preservation officials cannot "see" these elements, and as a consequence they do not take steps to consider them in their actions. It is this lack of consideration that Bulletin 38 addresses. The debate over how and why traditional cultural properties fit under federal regulation is a product of this clash over cultural values and perceptions. The first step in overcoming these problems requires an understanding of the issues that are most divisive. In the debate over traditional cultural properties, those issues include religion, law, property, and political self-determination.

One of the more profound differences between Native Americans and Euro-Americans is the way in which people of each group view and practice their religion. Native American communities do not separate their religious world from their secular world as do most Euro-Americans (Parker and King nd). Every aspect to their lives is linked to their spiritual view of existence (NPS 1990). For this reason, both cultural and natural features in the environment may hold traditional values that make them eligible for the National Register (Parker and King nd).

It is important to understand that properties of traditional cultural value cannot be eligible for the National Register for their intangible associations alone, such as beliefs or other sacred qualities (Parker and King 1990). The explanation for why sacredness in and of itself is not sufficient to make a property eligible for the National Register touches on one of the more contentious aspects of debate over traditional cultural properties. The first amendment of the U.S. Constitution guarantees a separation of church and state (King 1990). The National Register criteria under 36 CFR 60 are structured to reflect this separation by normally excluding properties used for religious purposes, unless—and this is crux of the matter—these properties derive their primary significance from their historical importance (NPS 1966). Thus, a place of profound religious importance to Native Americans cannot be listed on the National Register for its sacred qualities, but can be listed for its historical role in maintaining the cultural identity of a community. The Navajo Nation Historic Preservation Department describes the term "traditional cultural properties" as a "euphemism intended to obscure the religious qualities that these places have for people who do not separate the sacred from the secular." (NNHPD 1991:1). They are right, of course, but like most euphemisms, this one was coined to serve a particular purpose.

Some federal agencies have argued that the provision for excluding religious properties from the National Register prevents them from considering traditional cultural properties in Section 106 reviews of their undertakings. Such a position is arbitrary and overtly ethnocentric (King 1990). Since Native Americans do not separate the spiritual from the secular, to force them to do so in order to conform to a Euro-American world view would be unconscionable. The case for religious exclusion fails on its merits, however. The exclusion provision in the National Register criteria was added "in order to avoid allowing historic significance to be determined on the basis of religious doctrine, not in order to exclude arbitrarily any property having religious associations" (Parker and King nd: 13).

An equally complex issue involves the sensitivity of information on traditional cultural properties. To many Native Americans, knowledge about places of traditional cultural value is extremely sensitive, highly guarded, and not intended for dissemination to others. Release of information of this kind is a serious matter and could be dangerous or even fatal to those responsible (Parker and King nd). This situation has created a bit of a conundrum and begs the question: if traditional cultural properties are to be considered in the federal review process, but information on them is restricted, how then are state and federal preservation officials to evaluate their eligibility to the National Register? Providing meaningful guarantees to the tribes on the confidentiality of information is absolutely necessary if traditional cultural properties are to be successfully integrated into the federal review process. Most of the thinking on this subject involves some level of compromise where some, but not all, information on traditional cultural properties is collected and where strict prohibitions are placed on its dissemination. Despite these assurances, most Native Americans have deep misgivings about the disclosure of sensitive information of any kind to those who are not members of their communities. Unfortunately, anthropologists have an old legacy of violating the trust of Indian people which only makes communication more difficult (Evans 1993). One of the greatest challenges facing state and federal preservation officials is to convince Native Americans that their participation in the historic preservation process can be worth the effort and risks involved.

Perhaps the greatest irony of the change in law giving Native Americans a greater voice in the preservation of their heritage resources is that most of those resources are not on Indian-controlled lands. Over the past centuries, Native Americans have lost control of approximately 2 billion acres of land in the United States. Today, Indian tribes and individuals own approximately 52 million acres of land or about 2.5% of their original territory (NPS 1990). Obviously, this means that the vast majority of places of importance to Native Americans are owned or controlled by other people.

The implementing regulations for the National Historic Preservation Act give explicit instructions to federal agencies working on tribal lands about the necessity of inviting the tribe to be a consulting party in any decisions affecting National Register eligible properties (ACHP 1986). Compliance with this requirement varies, depending upon the agencies involved and the nature of their relationship with the tribes.

For those agencies that serve Indian people, and where federal actions are prompted by a tribal request, consul-

tation is a regular part of the working relationship. Under these circumstances, there is greater opportunity to work out preservation problems in advance of an undertaking because the tribes are involved in the planning process itself. Agencies that do not serve the tribes, but that work on tribal lands, have been less prone to consult in the past, especially if their interaction with Indian people is limited. Normally, the agency initiates the undertaking and consultation occurs only after plans have been formulated when there are fewer options available. In both cases, however, the tribes technically have considerable input in addressing the effect of federal actions on heritage resources because they control the land. When federal undertakings occur off reservation, however, the legal requirements for consultation change and the matter of control becomes more problematic. This is an especially sensitive issue when federal agencies work on non-tribal lands that are considered to be ancestral territory by one or more Indian tribes.

In off reservation situations, the tribe must be given the opportunity to comment on the undertaking, but only as an "interested person." As a practical matter, the views of interested persons do not have the force of law, and decisions can be made over their objections. Often, federal agencies are unaware of the importance of the land to a particular tribe or they do not know that consultation of any kind is required when working off reservation. For this reason, tribes have started to insist on being made full consulting parties to any decisions affecting their heritage resources on or off reservation lands.

The problem of land ownership is further complicated when it comes to state lands and private property. Many states have some sort of Antiquity Act, and some have provisions to protect burials, but few have laws that require consultation with tribes over matters of cultural heritage and patrimony. Private lands generally are not affected by the federal, state, or municipal preservation laws unless they are part of an action that is subject to a legally mandated review. This means that most non-federal land is not included in any consultations with Native Americans over heritage resources of any kind. Indian people feel a deep connection to their heritage resources regardless of who might own the land under them (NPS 1990). They do not understand why some of these resources should be protected under law and why some are exempt from that protection (Anyon 1991).

The vagaries of who owns what land and the effect that this has on historic preservation only contributes to the belief held by many Native Americans that they have little or no control over their heritage resources (NPS 1990). To many groups, the preservation of their heritage resources, especially burials and traditional cultural properties, is an issue that has become linked to their political aspirations for self-determination (Downer 1990). In New Mexico, for instance, the Navajo and the Zuni have argued that they have a right to be a party to decisions that effect their heritage resources wherever they are located (Anyon 1991). Other tribes across the country can be expected to make similar arguments as they become more actively involved in historic preservation. The central issue here is the desire of Native Americans for greater control of their lives (NPS 1990). Their concern with the protection of properties of traditional cultural value and other heritage resources is a part of this desire and should be understood in those terms.

As the reader can tell by this brief summary of the problems that influence the debate over traditional cultural properties, Bulletin 38 has prompted a reevaluation of the entire preservation process as it affects Native Americans. Archeologists and other professionals in the preservation community must pay attention to the changes that are occurring as Native concerns are incorporated into the federal review process. To do otherwise is to invite conflict and litigation, to ill serve the public, and to mislead private industry.

Solutions

The solution to the conflicts associated with traditional cultural properties lies in the establishment of meaningful dialogue between Native Americans and Euro-Americans. This will happen when all parties first agree to several points: 1) that properties of traditional cultural value may be eligible for the National Register of Historic Places; 2) that federal agencies therefore have a responsibility to consider the effects of their actions on traditional cultural properties; and 3) that Native Americans have the right to fully participate in the decisions that affect these properties both on and off the reservation.

As discussed above, part of the problem is perceptual: different people view the world and interact with it in different ways. The very terms we use in discussing the traditional cultural property issue are a barrier to mutual comprehension. For instance, many Indian people are offended by the terms "historic property" and "cultural resource" used by preservation officials to refer to things or places of cultural concern. They feel that these terms denigrate those things or places by turning them into commodities (NPS 1990). To preservation professionals, these are simply regulatory code words for "something important" that we try to use consistently so that we know that everyone is talking about the same kinds of things or places.

Native Americans and Euro-Americans must strive to understand the language that the other party uses in speaking about historic preservation. The key is communication; not just "consultation" but an open and honest dialogue that leads to agreement on what is to be done, why, and how. To this end, I suggest changes in the way that the tribes, the states, the federal government, and the archeologist interact with regard to traditional cultural properties.

Tribes

Indian people need to know that to be effective in protecting their heritage resources they must become actively involved in the federal review process. Some tribes have already established tribal archeology programs or historic preservation offices. These programs provide a mechanism that enables the tribe to respond to requests for consultation from federal and state agencies on matters of cultural heritage and patrimony. In my dealings with federal officials, the most common complaint I hear is that a tribe does not respond when the agency makes a

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request for consultation. It is likely that there is more than one explanation for why this occurs, including the manner in which the request was made, who the request was made to, and the level of understanding that each person involved in the consultation has about the historic preservation process.

In many cases, however, the problem is that the tribe does not have a mechanism for dealing with preservation-related requests for consultation, especially those having to do with sensitive matters such as traditional cultural properties. If the agency officials do not have a contact within the tribe, and if there is no process within tribal government for responding to their requests, then the answer from the tribe is likely to be silence. The problem is compounded when the agency official accepts the tribe's silence as a lack of concern, which may be far from the truth.

Tribes must give serious thought to setting up their own means of handling Section 106, NAGPRA, ARPA, and AIRFA related inquiries. Federal monies have become more available for this purpose through the National Park Service, and the Advisory Council on Historic Preservation can provided technical assistance (NPS 1990). The recent amendments to the National Historic Preservation Act enable the tribes to essentially take over the functions of the SHPO and manage their own resources (NCSHPO 1992). Until such time as they are able to do so, the establishment of tribal cultural committees or preservation offices that act as an interface between the tribe and federal and state government in the consultation process would go a long way toward giving Native Americans a real voice in preservation issues of direct concern to them.

SHPOs

The states have a direct responsibility to act as an advocate for the cultural heritage of their citizens. Native American and other traditional communities form a part of the constituency in many states and territories. While Native Americans often view the states as interlopers in the sovereign relationship between the tribes and the federal government (Downer 1990), the SHPOs can and do provide funding and other forms of assistance to tribes for preservation planning. The most important role for the SHPO, however, is sometimes that of a mediator between the tribes and federal agencies. A recent experience illustrates the point.

Several years ago, I became involved in a sewer line project at Zuni Pueblo sponsored by the Environmental Protection Agency. The EPA hired an engineering firm to develop plans to upgrade the sewer system at Zuni, a critically important project for the community. I heard about the project from the Zuni Archaeology Program, not the EPA, and so a meeting was arranged for all parties to review the plans and to initiate Section 106 consultations. The EPA was unfamiliar with their responsibilities under Section 106 and not at all aware of traditional cultural properties. The plans they developed passed through the heart of old village in an area where many important ceremonies are conducted throughout the year. To add injury to insult, the line truncated the Zuni river, itself a place of great religious and historical importance to the community.

I informed the EPA that there was a problem and that they had just developed plans for the equivalent of building a pipeline through the Vatican. This they understood. I explained that they had a legal obligation to address the problem and to work with the Zuni Cultural advisory team, an established group that acts as a liaison among tribal elders, the governing Council, and outside agencies. The EPA agreed and had two surveys performed: a standard archeological survey and an ethnographic survey to identify the traditional cultural properties. As a result, eleven traditional cultural properties were identified and determined to be National Register eligible. Since construction is still two years off, however, the EPA has had enough time to revise their plans and thereby avoid all of the areas of concern to the Zuni people.

Experiences like this demonstrate that adding traditional cultural properties to the standard consultation process works. In this case, the SHPO got involved and instructed the federal agency, the agency listened to the Zuni, and the Zuni had a mechanism for responding to the consultations. It is this role as facilitator that the SHPO must be able to play in order to bring about the necessary dialogue between the tribes and the federal agencies. There are sensitive issues involved here and SHPOs must be willing to take the lead if the agency or the tribe is unable to do so.

I recommend that the SHPOs become actively involved during the earliest planning stages of any projects where there might be traditional cultural properties. This will maximize the options that greater planning depth can bring.

Federal Agencies

Under the National Historic Preservation Act, the federal agencies are given the responsibility for complying with the Act. It is their job to consult with the SHPO, the tribes, and all interested parties in advance of any federal undertaking that may affect historic properties, including those of traditional cultural value.

There are two planning areas that the agencies need to develop in order to effectively address the traditional cultural property issue. The first is that they have to come up with a means of identifying which tribes should be consulted, in what area, and under what circumstances. For agencies that work on tribal land, it's obvious who they should be talking to. [Editor's note: Agencies should be aware, however, that tribes other than the current occupants of the land may have important traditional cultural property concerns about an undertaking.] Off reservation, the question of which tribes to contact becomes more of a challenge, especially if multiple tribes have ancestral claims to the same land.

The second planning area that federal agencies need to work on is in the development of procedures that anticipate the need to identify traditional cultural properties and to take into account the effects of federal actions on these properties. In other words, federal agencies need to take a proactive posture on this issue instead of waiting to react to the problems as they arise (Parker and King nd). There are really only two options for the agencies: 1) establish internal policies that require specific consultation on traditional cultural properties with tribal governments as a regular part of the compliance process; 2) develop a programmatic agreement or agreements with tribes that will structure future consultations traditional cultural properties.

The benefit of the first option is that it is relatively easy to achieve, and it starts the agency down the path of regular consultation with the tribes on the matter of traditional cultural properties. The drawback to this unilateral approach is that it is an overly simple fix to a complicated problem, one that does not provide for the necessary level of dialogue so that tribes will understand what is being asked of them and why. For this reason, the second choice is recommended.

Programmatic agreements can be used to meet an agency's responsibilities under the National Historic Preservation Act by modifying the standard regulatory procedures for compliance. They are extremely effective preservation tools, their biggest advantage being their versatility. A PA can be tailored to fit the needs of both the agency and the tribe. Since a PA is developed by the parties involved, it gives the tribes a direct role in the decision-making and, in effect, works out many of the problems in advance. This is exactly the kind of discussion that Native Americans want to have, because it puts them "in the loop" on decisions that affect their cultural patrimony at an early stage in the planning process.

Agency officials who want to get ahead of the curve on traditional cultural properties should start looking into Programmatic Agreements. This is especially true for agencies who have responsibilities on tribal lands, since traditional cultural properties will become a frequent part of their Section 106 compliance responsibilities.

Archeologists

Archeologists are particularly affected by the recent changes in historic preservation law, and they will continue to be so as Native American assert their interests. As experts in the art of deciphering the past, archeologists are frequently involved with cultural resources of Native American origin. Their work brings them into contact with both the remnants of the aboriginal past and, increasingly, with the decedents of the people who are the subject of their research. As Native Americans become more active in the preservation of their heritage resources, archeologists on the ground and in government offices can expect greater interaction with Native American peoples, especially over issues such as traditional cultural properties.

There are two basic problems that archeologists must face in order to add traditional cultural properties to their work load. The first, as explained, is cultural. The average Euro-American archeologists, steeped in his or her own culture, often cannot "see" that portion of the cultural landscape that contains traditional cultural properties. Now another set of eyes may be needed to identify all that needs to be identified. The second problem is one of training. Because of the nature of their profession, archeologists are most often concerned with the material, as opposed to ideological, aspects of cultural behavior. They are not trained to be sensitive to the kinds of issues that are associated with properties of traditional cultural value. The twin products of culture and training, therefore, represent major impediments to effectively addressing the challenges of recognizing, recording, and evaluating traditional cultural properties.

Archeologists, however, are adept at learning new skills that help them to perform their jobs. They are also used to commanding a wide variety of information from many different sources and making sense of it all. With new training, archeologists can either coordinate their work with ethnologists or other persons better able to identify traditional cultural properties, or they can learn to ask the right questions of the right people themselves. Either way, the business of doing federally mandated historic preservation is changing, and archeologists, because they are often the only cultural resource specialists in an agency or environmental firm, must adapt to these changes.

The challenges of identifying properties of traditional cultural value have added a new dimension to the work normally performed by archeologists. Now, instead of being concerned with the objective, material aspects of the past, they must also become aware of the subjective, nonmaterial aspects of the present; this is no longer an academic exercise. Naturally, there is a certain confusion over what this means, but this is not an insoluble problem. It does mean making a conceptual adjustment to new working conditions. It means making operational changes as well, i.e., adding interview to the standard survey procedure, talking to agency and tribal officials, educating private industry, anticipating the need for extra time for consultation, and generally doing what must be done so that traditional cultural properties are identified and evaluated.

I highly recommend that archeologists become well acquainted with traditional cultural properties both in concept and in practice. They can expect to run into issues that relate to Native Americans both on and off reservation, be it the reburial issue, Native American religious freedom, or the preservation of properties of traditional cultural value. The days of little or no accountability to tribal peoples for the research that archeologists do are fast disappearing. Archeologists must become better anthropologists and in doing so be better prepared for the work they are being called upon to perform.

Conclusion

In 1962 Thomas Kuhn spoke of paradigmatic change in science. He explained that change is often resisted, and in many cases even ignored, if it challenges the accepted norm (Kuhn 1962). In my opinion, the historic preservation profession in general and archeology in particular are experiencing a similar clash between old and new views of these disciplines. The title of this paper "when worlds collide" is an apt metaphor for the relationship between Indian and non-Indian cultures as it relates to the issue of traditional cultural properties. It also describes the conflict within archeology and the role that it plays in the field of historic preservation.

It would be an exaggeration to say that today American archeology is historic preservation or it is nothing, but it is by no means a wild exaggeration. Most archeology is driven by historic preservation law, and as such, archeology is no longer about the past, but about the present and the future as well. The changes in the legal requirements affecting how and why archeology is conducted in this country have imposed a sensitivity to the living that, heretofore, has not been a hallmark of the profession. In 1973, Willey and Sabloff warned archeologists that they cannot ignore the feelings of native peo-

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ples concerning their work. This admonition was presented as a matter of moral and ethical choice; now it is a legal requirement.

The legal trends affecting historic preservation will infuse archeology with new knowledge and awareness of Indian culture, and this will benefit the discipline as a whole. It will also bring Native Americans into the process through which the nation's heritage resources are protected and preserved for the future. Archeologist must acknowledge, however, that the past is no longer their sole domain; other people are involved now, and they have a right to be involved. To be an archeologists in this country means that one must learn to work within the social, cultural, and political environments of the day. The present controversy over traditional cultural properties serves as a reminder of this truth.

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At El Rancho, NM, traditional use of the dirt parking lot shown here …

… for the conduct of Matachines dances was found to have made the site eligible for the National Register.
Top photo by Patricia L. Parker.
Bottom photo by Los Matachines de El Rancho.